

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Clear Rate Communications, Inc.
for a Certificate of Public Convenience and
Necessity to Operate as a Provider of Limited
Facilities-Based and Resold Local Exchange
Telecommunications Service within the State of
California.

Application 12-05-023
(Filed May 17, 2012)

**DECISION GRANTING CLEAR RATE COMMUNICATIONS, INC.
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER
TO PROVIDE LIMITED FACILITIES BASED AND RESOLD LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICE**

Summary

Clear Rate Communications, Inc. filed an application for a certificate of public convenience and necessity (CPCN) for authority to provide limited facilities-based and resold local exchange telecommunications services in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California, and Verizon California Inc.

By this decision, we grant Clear Rate Communications, Inc., a CPCN to provide limited facilities-based and resold local exchange telecommunications service, on the terms and conditions set forth in the ordering paragraphs.

Background

On May 17, 2012, Clear Rate Communications, Inc. (Clear Rate or Applicant) applied for a certificate of public convenience and necessity (CPCN)

to provide limited facilities-based and resold local exchange telecommunications service, in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California (AT&T) and Verizon California, Inc. (Verizon) throughout California. The Applicant is a Michigan corporation with its principal address at 555 S. Old Woodward, Ste. 600, Birmingham, MI 48009.

California Environmental Quality Act (CEQA)

The CEQA requires the Commission act, in certain circumstances, as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. However, since the Applicant states that it does not intend to construct any facilities, it can be said with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Applicant must file for additional authority and submit to any necessary CEQA review.

Financial Qualifications

Pursuant to Rule¹ 4.B of Decision (D.) 95-12-056 (Attachment C), an applicant for a CPCN for authority to provide limited facilities-based and resold local exchange must demonstrate that it has \$25,000 cash or cash equivalent to meet the firm's start-up expenses. Applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

At Exhibit D (confidential) to the application, the Applicant has provided financial statements that demonstrate that it has access to well over \$25,000 cash or cash equivalent. This amount is sufficient to cover start-up expenses and is reasonably liquid and available.

Applicant proposes to offer service within the territories of AT&T and Verizon. It is not anticipated that any additional resale and/or deposit agreements would be required by AT&T and Verizon. Thus, Applicant satisfies our financial qualifications requirements.

Managerial and Technical Qualifications

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. Applicant has provided biographical information on its management (Exhibit G on its application) that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant has verified that no one associated with it or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Clear Rate was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Applicant has also verified that no one associated with or employed by it as an affiliate, officer, director, partner or owner of more than 10% of Clear Rate was previously associated with any telecommunications carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or

for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

Tariffs

Commission staff reviewed Applicant's draft tariffs (Exhibit C to its application) for compliance with Commission rules and regulations. Deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Applicant must correct these deficiencies as a condition of our approval of its application.

Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.² In its application (Exhibit B), Applicant provided a map of the location of its proposed service territory, in compliance with this requirement.

Expected Customer Base

Applicant provided its estimated customer base for the first and fifth years of operation in Section VII of its application. The Applicant has complied with this requirement.

Request for Treatment as a Nondominant Carrier

Applicant requests treatment as a nondominant carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of nondominant carriers in D.85-01-008, and subsequently modified

² D.95-12-056 at Appendix C, Rule 4.E.

them in D.85-07-081 and D.85-11-044. We grant Applicant's request for nondominant carrier status, provided that Applicant follows all rules detailed in the above referenced decisions.

Request to File Under Seal

Pursuant to Rule 11.4, Clear Rate has filed a motion for leave to file Exhibit D to the application as confidential material under seal. Applicant represents that the information is sensitive, and disclosure could place it at an unfair business disadvantage. We have granted similar requests in the past, and do so here.

Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange carrier. Accordingly, we grant Clear Rate a CPCN to provide limited facilities-based and resold local exchange telecommunications services in the service territories of AT&T and Verizon, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

Categorization and Need for Hearing

In Resolution ALJ 176-3294, dated May 24, 2012, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Comments on Proposed Decision

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant

to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge (ALJ) in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on May 22, 2012. No protests have been filed. A hearing is not required.
2. Applicant seeks authorization to provide limited facilities-based and resold local exchange telecommunications service in the service territories of AT&T and Verizon.
3. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
4. Applicant has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.
5. Applicant's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
6. No one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of the Applicant was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.
7. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of the Applicant was previously associated with any telecommunications carrier that has been found either civilly or

criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

8. Except for the deficiencies identified in Attachment A to this decision, Applicant's draft tariffs comply with the Commission's requirements.

9. Applicant has provided a map of the location of its proposed service territory.

10. Applicant has provided an estimate of its customer base for the first and fifth year of operation.

11. Applicant does not propose to construct any facilities.

12. Applicant has filed a motion for leave to file confidential financial information under seal.

Conclusions of Law

1. Applicant should be granted a CPCN to provide limited facilities-based and resold local exchange telecommunications service in all the service territories of AT&T and Verizon, subject to the terms and conditions set forth below.

2. Applicant has the financial ability to provide the proposed service.

3. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

4. Applicant should be granted nondominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

5. Applicant's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

6. Since Applicant does not propose to construct any facilities, it can be said with certainty that granting it authority to provide local exchange service will not have a significant adverse effect upon the environment.

7. Applicant's request to file materials under seal should be granted, materials under seal should not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Clear Rate Communications, Inc., to provide limited facilities-based and resold local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Verizon California Inc., subject to the terms and conditions set forth below.

2. Clear Rate Communications, Inc. may not offer competitive local exchange service until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and corrected for the deficiencies set forth in Attachment A.

3. The corporate identification number assigned to Clear Rate Communications, Inc., U7238C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

4. Clear Rate Communications, Inc. is a nondominant carrier, subject to the Commission rules and regulations as detailed in Decision (D.) 85-01-008 and modified in D.85-07-081 and D.85-11044.

5. Clear Rate must file, Communications, Inc. must file, in this docket, a written acceptance of the certificate of public convenience and necessity granted in this proceeding within 30 days of the effective date of this order.

6. Clear Rate Communications, Inc. must report surcharges and user fees regularly even if the amount due is \$0. Instructions on the remittance and payment of surcharges and user fees are provided in Attachment B. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

7. Prior to initiating service, Clear Rate Communications, Inc. must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

8. Clear Rate Communications, Inc. must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Clear Rate Communications, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar-year basis with the information contained in Attachment D.

10. Clear Rate Communications, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order

104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Clear Rate Communications, Inc. must file a tariff within 12 months of the effective date of this order, or its certificate of public convenience and necessity will be cancelled.

12. Clear Rate Communications, Inc.'s (Clear Rate) request to file materials under seal is granted, for a period of two years after the date of this order. During this two-year period, the materials under seal shall not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge, except as agreed to in writing by Clear Rate or as ordered by a court of competent jurisdiction. If Clear Rate believes it is necessary for this information to remain under seal for longer than two years, it may file a new motion at least 30 days before expiration of this limited protective order.

13. Application 12-05-023 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

List of deficiencies in tariff filed by Clear Rate Communications, LLC, U-7238-C in A.12-05-023 to be corrected in its initial tariff compliance filing.

1. GO 96-B Sect. 8.1.3 – The tariff (including no longer effective tariffs) must be made available for public inspection or copying within the carrier's California service area. Delete availability of the tariff at the Commission on tariff sheet 6.
2. GO 96-B Section 8.4 – The identifying U# of the utility must be provided on the left side of the header. The name and title of the company's representative must be provided in the center of the footer.
3. GO 96-B Sections 8.5.1 – The tariff must indicate the CPUC assigned utility ID (U7238C) in the Title Page and on each sheet in the upper left header under the Company name and address.
4. GO 96-B Sect 8.5.3 – The tariff must include as part of the preliminary statement whether the utility serves wholesale and/or retail and business and/or residential customers only.
5. GO 96-B Section 8.5.6 – The tariff must provide a list of all contracts and other deviations under which the utility provides service at rates or conditions other than those contained in its tariff then in effect. The list must state: the name and location of the customer; type or class of service; date of execution; the date and number of the Commission order authorizing the contract and other deviation; and the utility's most comparable rate schedule, together with a summary of how the contract or other deviation differs from that schedule. If Clear Rate does not have any such contract or deviation then in effect, a statement to this effect should be provided in lieu of this list.
6. G.O 96-B Sect.8.5.8 – The tariff must provide sample forms such as applications for service, regular bills, contract forms, regular bills for service, connection fee data, deposit receipts and all other forms of concern to customers.

7. D.95-07-054 - Appendix B, Rule 1, Items A-G – The tariff must include all the information the company must provide to the applicant or customer upon request.
8. D.95-07-054 - Appendix B, Rule 4 – Tariff must state that under credit requirement that the customer cannot be denied for failure to provide SS# and that a guarantor or cosigner maybe used to establish credit. The tariff must include language prescribed in Appendix B, Rule 4, Items A-C.

(END OF ATTACHMENT A)

ATTACHMENT B**REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Applicant shall file, in this docket with reference to this decision number,³ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. All carriers authorized by this Commission to operate in California are required to assess surcharges and user fees on their end-user intrastate service revenue, and must comply with the reporting and payment filing requirements in accordance with the directions of the Commission.

- a. The current 1.150% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
- b. The current 0.200% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Deaf and Disabled Telecommunications Program (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is either 0.180% of gross intrastate revenue (Resolution M-4819, dated June 7, 2007, effective July 1, 2007);
- d. The current 0.40% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost

³ Written acceptance filed in this docket does not reopen the proceeding.

- Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C (Resolution T-17357, dated June 7, 2012, effective July 1, 2012);
- e. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.; D.07-12-054; Resolution T-17311, dated March 24, 2011, effective May 1, 2011);
 - f. The current 0.14% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advanced Services Fund (D.07-12-054); Resolution T-17343, dated September 22, 2011, effective November 1, 2011; and
 - g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-17142, dated April 24, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant should check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user charges until further revised.

Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at:

<http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>. To request a user ID and password for TUFFS online filing and for questions, please email telco_surcharge@cpuc.ca.gov.

Carriers must file and pay the CPUC User Fee (see above item 2c) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting and filing are available at: <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant is a competitive local exchange carrier (CLEC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

6. Applicant shall file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

8. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within

five days after service begins, and again within five days after intraLATA service begins.⁴

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

12. Applicant shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. Applicant shall file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar year basis using the form contained in Attachment D.

14. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division

⁴ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

17. Applicant is exempt from Commission Rules of Practice and Procedure 3.1(b).

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Communications Division's Bankruptcy Coordinator.

21. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
 7. Date operations were begun.
 8. Description of other business activities in which the utility is engaged.
 9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.

10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)